



Reprinted
February 19, 2008

ENGROSSED SENATE BILL No. 31

DIGEST OF SB 31 (Updated February 18, 2008 4:47 pm - DI 96)

Citations Affected: IC 8-23.

Synopsis: State highway property acquisition. Establishes notice and hearing procedures applying to the establishment by the Indiana department of transportation (department) of rights-of-way for additions to the state highway system. Requires the department to comply with certain notification procedures relating to compensation to owners for damage done to real property by the department during the acquisition process.

Effective: July 1, 2008.

**Zakas, Landske, Broden, Arnold,
Riegsecker, Weatherwax**
(HOUSE SPONSOR — DEMBOWSKI)

January 8, 2008, read first time and referred to Committee on Homeland Security, Transportation & Veterans Affairs.
January 22, 2008, amended, reported favorably — Do Pass.
January 28, 2008, read second time, ordered engrossed. Engrossed.
January 29, 2008, read third time, passed. Yeas 47, nays 0.

HOUSE ACTION

January 30, 2008, read first time and referred to Committee on Roads and Transportation.
February 14, 2008, amended, reported — Do Pass.
February 18, 2008, read second time, amended, ordered engrossed.

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ES 31—LS 6394/DI 103+



Reprinted
February 19, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 31

A BILL FOR AN ACT to amend the Indiana Code concerning
utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-23-5-9 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2008]: **Sec. 9. (a) The department may establish the approximate**
4 **locations, using the recommended widths established by the**
5 **department in the department's approved design manual for**
6 **equivalent classification of roads, of rights-of-way for additions to**
7 **the state highway system.**

8 **(b) If the department establishes the approximate locations and**
9 **widths of rights-of-way for an addition to the state highway system**
10 **under subsection (a), the department shall conduct a public**
11 **hearing in at least one (1) county in which a right-of-way for the**
12 **addition is located. The department shall publish notice of a**
13 **hearing conducted under this subsection in two (2) newspapers of**
14 **general circulation in the county in which the hearing will be**
15 **conducted at least ten (10) days before the hearing. If only one (1)**
16 **newspaper is published in the county, publication in that**
17 **newspaper is sufficient. Notice of the hearing shall be given by mail**

ES 31—LS 6394/DI 103+



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to all owners of real property identified within the rights-of-way shown on the map prepared under subsection (c).

(c) If the department establishes the approximate locations and widths of rights-of-way for an addition to the state highway system under subsection (a), the department shall prepare a map showing the approximate location and width of each right-of-way for the proposed addition. The map must display the following:

(1) Existing highways in the area of the addition.

(2) Property lines and owners of record of property to be acquired for the rights-of-way.

(3) Other information determined necessary by the department.

The department shall approve the map, with changes (if applicable), at the public hearing conducted under subsection (b). The department shall record the approval and a copy of the approved map in the office of the recorder of each county in which land to be acquired for the addition is located.

(d) The department shall:

(1) publish notice of a recording under subsection (c) in two (2) newspapers of general circulation in each county in which an approval is recorded; however, if only one (1) newspaper is published in the county, publication in that newspaper is sufficient; and

(2) not more than sixty (60) days after an approval is recorded, send notice of the recording by certified mail to all owners of record of real property to be acquired for rights-of-way for the addition.

(e) The owner of property to be acquired for a right-of-way must give at least sixty (60) days notice by registered mail to the department before developing or otherwise improving the property. However, the owner may perform normal or emergency repairs to existing structures on the property without giving notice to the department.

(f) Not more than forty-five (45) days after receiving a notice under subsection (e), the department shall respond by providing notice to the property owner of the department's intent to acquire the property. The department shall:

(1) purchase; or

(2) exercise the right of eminent domain to acquire;

the property not more than one hundred eighty (180) days after responding under this subsection. If the department does not purchase the property or acquire the property by eminent domain

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1 within one hundred eighty (180) days after responding under this
 2 subsection, the department may subsequently acquire the property
 3 through the exercise of the right of eminent domain under
 4 IC 32-24.

5 (g) An owner of property to be acquired for a right-of-way may
 6 not receive damages for any development or improvement for
 7 which the owner is required to give notice to the department under
 8 subsection (e) unless the department fails to purchase or exercise
 9 the right of eminent domain to acquire the property under
 10 subsection (f).

11 (h) The state or a county or municipality in which an addition
 12 to the state highway system is located may acquire a right-of-way
 13 needed for the addition at any time. For purposes of this
 14 subsection, the fair market value of the property shall be
 15 determined as follows:

16 (1) If the property is purchased, the fair market value on the
 17 date of purchase.

18 (2) If the property is acquired by eminent domain, the fair
 19 market value on the date on which the complaint in
 20 condemnation was filed.

21 However, if the property is agricultural land, the fair market value
 22 shall be determined under IC 32-24-1.

23 (i) The department shall adopt guidelines to determine whether
 24 a project constitutes an addition to the state highway system for
 25 purposes of this section. In adopting guidelines under this
 26 subsection, the department shall consider the following:

27 (1) The need for additional capacity.

28 (2) The estimated cost of the project.

29 (3) Whether the project is new construction or maintenance.

30 (j) As used in this section, "owner" does not include a utility.

31 (k) At the same time and in the same manner as the notice is
 32 sent under subsection (d)(2), the department shall notify the owner
 33 of property to be acquired for a right-of-way of the following:

34 (1) With respect to damage that occurs to the property as a
 35 result of the acquisition of the property for a right-of-way,
 36 including entry onto the land for a purpose set forth in
 37 IC 8-23-7-6:

38 (A) a description of the owner's right to compensation for
 39 the damage from the department; and

40 (B) the procedure that the owner must follow to obtain the
 41 compensation.

42 (2) The name, mailing address, and telephone number of an

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individual or office within the department to which the owner may direct questions concerning the rights and procedures described in subdivision (1).

SECTION 2. IC 8-23-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. The department shall give written notice to the owners of property described in section 4 of this chapter that the department intends to acquire the real property or rights for highway purposes. The notice may be served in person or sent by certified mail to the owners of the property at the address shown on the tax records of the county. **Notice under this section must contain the following information:**

(1) With respect to damage that occurs to the owner's property as a result of the acquisition of the property for highway purposes, including entry upon, over, or under the property as set forth in section 26 of this chapter:

- (A) a description of the property owner's right to compensation for the damage from the department; and
- (B) the procedure that the owner must follow to obtain the compensation.

(2) The name, mailing address, and telephone number of an individual or office within the department to which an owner may direct questions concerning the rights and procedures described in subdivision (1).

SECTION 3. IC 8-23-7-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 26. An authorized employee or representative of the department engaged in a survey or investigation authorized by the commissioner or the commissioner's designee, **including a survey or investigation for purposes of IC 8-23-5-9**, may enter upon, over, or under any land or property within Indiana to conduct the survey or investigation by manual or mechanical means, which include the following:

- (1) Inspecting.
- (2) Measuring.
- (3) Leveling.
- (4) Boring.
- (5) Trenching.
- (6) Sample-taking.
- (7) Archeological digging.
- (8) Investigating soil and foundation.
- (9) Transporting equipment.
- (10) Any other work necessary to carry out the survey or investigation.

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SECTION 4. IC 8-23-7-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 27. (a) Before an authorized employee or representative of the department enters upon, over, or under any land or water under section 26 of this chapter, the occupant of the land or water shall be notified in writing by first class United States mail of the entry not later than five (5) days before the date of entry. The employee or representative of the department shall present written identification or authorization to the occupant of the land or water before entering the land or water.

(b) **At the same time and in the same manner as the notice required under subsection (a), the department shall notify the occupant and the record owner of the land or property of the following:**

(1) **With respect to damage that occurs to the land or property as a result of the acquisition of the land or property for highway purposes, including entry upon, over, or under the land or property as set forth in section 26 of this chapter:**

(A) **a description of the aggrieved party's right to compensation for the damage from the department; and**

(B) **the procedure that the aggrieved party must follow to obtain the compensation.**

(2) **The name, mailing address, and telephone number of an individual or office within the department to which an aggrieved party may direct questions concerning the rights and procedures described in subdivision (1).**

SECTION 5. IC 8-23-7-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 28. If during an entry under section 26 of this chapter damage occurs to the land or water as a result of the entry or work performed during the entry, the department shall compensate the aggrieved party. If the aggrieved party is not satisfied with the compensation determined by the department, the amount of damages shall be assessed by the county agricultural extension educator of the county in which the land or water is located and two (2) disinterested residents of the county, one (1) appointed by the aggrieved party and one (1) appointed by the department. A written report of the assessment of damages shall be mailed to the aggrieved party and the department by first class United States mail. If either the department or the aggrieved party is not satisfied with the assessment of damages, either or both may file a petition, not later than fifteen (15) days after receiving the report, in the circuit or superior court of the county in which the land or water is located. **The department shall pay any compensation awarded to an aggrieved party under this**

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- 1 **section:**
2 **(1) not more than thirty (30) days after the date on which the**
3 **parties agree to the amount of the compensation; or**
4 **(2) as ordered by the circuit or superior court.**

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SENATE MOTION

Madam President: I move that Senator Riegsecker be added as coauthor of Senate Bill 31.

ZAKAS

 COMMITTEE REPORT

Madam President: The Senate Committee on Homeland Security, Transportation and Veterans Affairs, to which was referred Senate Bill No. 31, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 4, delete "locations and" and insert **"locations, using the recommended"**.

Page 1, line 4, after "widths" insert **"established by the department in the department's approved design manual for equivalent classification of roads,"**.

Page 1, line 11, delete "one (1) newspaper" and insert **"two (2) newspapers"**.

Page 1, line 13, after "hearing." insert **"If only one (1) newspaper is published in the county, publication in that newspaper is sufficient. Notice of the hearing shall be given by mail to all owners of real property and utilities identified within the rights-of-way shown on the map."**

Page 2, between lines 4 and 5, begin a new line block indented and insert:

"(3) The type, location, and owners of utility facilities in the area of the addition."

Page 2, line 5, delete "(3)" and insert **"(4)"**.

Page 2, line 13, delete "one" and insert **"two (2) newspapers"**.

Page 2, line 14, delete "(1) newspaper".

Page 2, line 15, after "recorded;" insert **"however, if only one (1) newspaper is published in the county, publication in that newspaper is sufficient;"**.

Page 2, delete lines 20 through 23.

Page 2, line 24, delete "(f)" and insert **"(e)"**.

Page 2, line 30, delete "(g)" and insert **"(f)"**.

Page 2, line 31, delete "(f)," and insert **"(e),"**.

Page 2, line 37, after "subsection." insert **"If the department does**

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not purchase the property or acquire the property by eminent domain within one hundred eighty (180) days after responding under this subsection, the department may subsequently acquire the property through the exercise of the right of eminent domain under IC 32-24."

Page 2, line 38, delete "(h)" and insert "(g)".

Page 2, line 41, delete "(f)" and insert "(e)".

Page 3, line 1, delete "(g)." and insert "(f)".

Page 3, line 2, delete "(i)" and insert "(h)".

Page 3, after line 13, begin a new paragraph and insert:

"(i) The department shall adopt guidelines to determine whether a project constitutes an addition to the state highway system for purposes of this section. In adopting guidelines under this subsection, the department shall consider the following:

(1) The need for additional capacity.

(2) The estimated cost of the project.

(3) Whether the project is new construction or maintenance."

and when so amended that said bill do pass.

(Reference is to SB 31 as introduced.)

WYSS, Chairperson

Committee Vote: Yeas 7, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Roads and Transportation, to which was referred Senate Bill 31, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 1, delete "and utilities".

Page 2, line 11, delete "The type, location, and owners of utility facilities in the".

Page 2, delete line 12.

Page 2, line 13, delete "(4)".

Page 2, run in lines 11 through 13.

Page 3, after line 31, begin a new paragraph and insert:

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"(j) As used in this section, "owner" does not include a utility."
and when so amended that said bill do pass.

(Reference is to SB 31 as printed January 23, 2008.)

AUSTIN, Chair

Committee Vote: yeas 9, nays 0.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 31 be amended to read as follows:

Page 2, line 2, delete "map." and insert **"map prepared under subsection (c)."**

Page 3, after line 30, begin a new paragraph and insert:

"(k) At the same time and in the same manner as the notice is sent under subsection (d)(2), the department shall notify the owner of property to be acquired for a right-of-way of the following:

(1) With respect to damage that occurs to the property as a result of the acquisition of the property for a right-of-way, including entry onto the land for a purpose set forth in IC 8-23-7-6:

(A) a description of the owner's right to compensation for the damage from the department; and

(B) the procedure that the owner must follow to obtain the compensation.

(2) The name, mailing address, and telephone number of an individual or office within the department to which the owner may direct questions concerning the rights and procedures described in subdivision (1).

SECTION 2. IC 8-23-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. The department shall give written notice to the owners of property described in section 4 of this chapter that the department intends to acquire the real property or rights for highway purposes. The notice may be served in person or sent by certified mail to the owners of the property at the address shown on the tax records of the county. **Notice under this section must contain the following information:**

(1) With respect to damage that occurs to the owner's property as a result of the acquisition of the property for highway purposes, including entry upon, over, or under the

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property as set forth in section 26 of this chapter:

- (A) a description of the property owner's right to compensation for the damage from the department; and
- (B) the procedure that the owner must follow to obtain the compensation.

(2) The name, mailing address, and telephone number of an individual or office within the department to which an owner may direct questions concerning the rights and procedures described in subdivision (1).

SECTION 3. IC 8-23-7-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 26. An authorized employee or representative of the department engaged in a survey or investigation authorized by the commissioner or the commissioner's designee, **including a survey or investigation for purposes of IC 8-23-5-9**, may enter upon, over, or under any land or property within Indiana to conduct the survey or investigation by manual or mechanical means, which include the following:

- (1) Inspecting.
- (2) Measuring.
- (3) Leveling.
- (4) Boring.
- (5) Trenching.
- (6) Sample-taking.
- (7) Archeological digging.
- (8) Investigating soil and foundation.
- (9) Transporting equipment.
- (10) Any other work necessary to carry out the survey or investigation.

SECTION 4. IC 8-23-7-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 27. (a) Before an authorized employee or representative of the department enters upon, over, or under any land or water under section 26 of this chapter, the occupant of the land or water shall be notified in writing by first class United States mail of the entry not later than five (5) days before the date of entry. The employee or representative of the department shall present written identification or authorization to the occupant of the land or water before entering the land or water.

(b) At the same time and in the same manner as the notice required under subsection (a), the department shall notify the occupant and the record owner of the land or property of the following:

- (1) With respect to damage that occurs to the land or property

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as a result of the acquisition of the land or property for highway purposes, including entry upon, over, or under the land or property as set forth in section 26 of this chapter:

- (A) a description of the aggrieved party's right to compensation for the damage from the department; and
- (B) the procedure that the aggrieved party must follow to obtain the compensation.

(2) The name, mailing address, and telephone number of an individual or office within the department to which an aggrieved party may direct questions concerning the rights and procedures described in subdivision (1).

SECTION 5. IC 8-23-7-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 28. If during an entry under section 26 of this chapter damage occurs to the land or water as a result of the entry or work performed during the entry, the department shall compensate the aggrieved party. If the aggrieved party is not satisfied with the compensation determined by the department, the amount of damages shall be assessed by the county agricultural extension educator of the county in which the land or water is located and two (2) disinterested residents of the county, one (1) appointed by the aggrieved party and one (1) appointed by the department. A written report of the assessment of damages shall be mailed to the aggrieved party and the department by first class United States mail. If either the department or the aggrieved party is not satisfied with the assessment of damages, either or both may file a petition, not later than fifteen (15) days after receiving the report, in the circuit or superior court of the county in which the land or water is located. **The department shall pay any compensation awarded to an aggrieved party under this section:**

- (1) not more than thirty (30) days after the date on which the parties agree to the amount of the compensation; or
- (2) as ordered by the circuit or superior court."

Renumber all SECTIONS consecutively.

(Reference is to ESB 31 as printed February 15, 2008.)

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